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## *Death Sentence Can Be Imposed For Espionage, U.S. Judge Rules*

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SAN FRANCISCO, Jan. 12 — The Federal district judge who will preside at the trial of James Durward Harper Jr., an engineer charged with espionage, has ruled that Mr. Harper is subject to the death penalty if convicted.

Despite contentions by both the defense and prosecution in the case that the death penalty was rendered unconstitutional in 1972 by the United States Supreme Court's decision in *Furman v. Georgia*, the judge, Samuel Conti, today ruled that death was not an unconstitutional punishment for the crime of espionage.

Mr. Harper, a 49-year-old engineer from Mountain View, 45 miles south of here, was arrested on Oct. 15 on the basis of an affidavit from the Federal Bureau of Investigation accusing him of selling missile research data to a Polish spy for \$250,000. He was indicted Dec. 9 and charged with nine counts of espionage and tax evasion. On Dec. 12 he pleaded not guilty to the charges and is scheduled for trial on April 3.

Judge Conti, who was appointed to the bench in 1970 by President Nixon and has a reputation for a strict law-and-order stance and tough sentencing in criminal cases, last month told attorneys in the case that he would research the question of whether the death penalty could be imposed.

### **Judge Draws Distinction**

In his ruling today, Judge Conti found the Supreme Court's ruling in the *Furman* case did not apply to the Federal espionage statute. In the *Furman* case, the Court ruled the death penalty unconstitutional on the ground that its arbitrary application in some states discriminated against minority defendants.

Judge Conti found that *Furman* and subsequent cases addressed the constitutionality of the death penalty as ap-

plied solely in crimes of violence against individuals. The crime of espionage poses potentially greater danger to society by jeopardizing the safety of every citizen, Judge Conti said.

"Given the potential consequences of a serious breach of our national security through espionage," the judge wrote, "this court finds that capital punishment for espionage is not uniformly disproportionate to the severity of the offense."

Jerrold M. Ladar, the San Francisco lawyer representing Mr. Harper, said he would appeal the judge's ruling the United States Court of Appeals for the Ninth Circuit.

### **Accusations Against Harper**

Mr. Harper is accused of obtaining secret weapons research documents through his wife, Ruby Louise Schuler Harper, who was a secretary at Systems Control Inc. and Systems Control Technology in Palo Alto. Mrs. Harper died June 22, 1983 of cirrhosis of the liver at the age of 39.

The indictment charges that from May 1979 until his arrest, Mr. Harper conspired to sell United States weapons documents to Polish agents who passed them to the Soviet Union. He is also charged with filing false income tax statements and evading income taxes.

For months before his arrest, Mr. Harper had tried to bargain for immunity with the Government through William Dougherty, a southern California lawyer who represented Christopher Boyce.

Mr. Boyce, who had worked at TRW Systems Group in southern California, was convicted of selling military secrets to Soviet agents in Mexico City. Mr. Dougherty represented Mr. Harper after his arrest but was replaced in November by Mr. Ladar, a former chief assistant United States Attorney.